

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

---

## Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2015.

594

LEWIS E. SMOOT, APPELLANT,

*vs.*

JULIA TURNER HEYL, EDWARD RANDOLPH HEYL,  
HELEN HEYL, CHARLES HEATH HEYL, JR., AND  
DELPHINE TURNER HEYL, BY THEIR NEXT FRIEND,  
CHARLES H. HEYL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

---

FILED APRIL 26, 1909.



# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CROSS EXAMINATION

1915

JULIA A. SNOW  
DIRECT EXAMINATION  
CROSS EXAMINATION  
RE-EXAMINATION

APPEAL FROM

Caption  
Bill  
Answer of James J.  
Stipulation  
Joinder of issue  
Testimony on behalf of  
Testimony of James J.  
Direct examination  
Exhibit

Cross-examination  
Testimony of Snow-Jones  
Direct examination  
Letter from Samuel M.  
Letter from F. H.  
Letter from Jos. F. W.  
Permit to erect tent  
Certificate of approval  
Permit to build dwelling  
Certificate as to purchase

	Original.	Print.
Letter from L. E. Smoot to Snowden Ashford as to amendment of permit to build.....	38	19
Letter from S. Ashford to L. E. Smoot relative to change of plan .....	39	19
Letter from A. M. Poynton to L. E. Smoot relative to foundations and position of party wall.....	40	20
Cross-examination .....	41	20
Redirect examination .....	51	24
Recross-examination .....	51	24
Exhibit C. H. D. No. 2—Plat of survey of location of house.	53	25
Testimony of James T. Wilson.....	54	25
Direct examination.....	54	25
Cross-examination.....	56	26
Testimony of Charles H. Heyl.....	60	28
Direct examination.....	60	28
Cross-examination.....	68	31
Testimony of Charles H. Heyl (recalled) .....	76	34
Direct examination.....	76	34
Cross-examination.....	79	36
Opinion of Justice Wright.....	80	36
Final decree.....	82	37
Appeal and penalty of bond fixed, to act as a supersedeas.....	83	37
Appeal bond (supersedeas) filed.....	83	37
Time in which to file transcript of record in Court of Appeals extended .....	83	38
Directions to clerk for preparation of transcript of record .....	84	38
Clerk's certificate .....	85	38

In the Court of Appeals of the District of Columbia.

No. 2015.

LEWIS E. SMOOT, Appellant.

vs.

JULIA TURNER HEYL et al.

a Supreme Court of the District of Columbia.

In Equity. No. 25945.

JULIA TURNER HEYL, EDWARD RANDOLPH HEYL, et al.

Charles Heath Heyl, Jr., and Delphine Turner Heyl,

Charles H. Heyl, Their Next Friend, Complainants.

vs.

LEWIS E. SMOOT, Defendant.

UNITED STATES OF AMERICA,

*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, on the 10th day of January, 1906, hereinafter mentioned, the following papers were filed and recorded in the proceedings had in the above entitled cause, to wit:

1

*Bill.*

Filed January 10, 1906.

In the Supreme Court of the District of Columbia.

In Equity. No. 25945.

JULIA TURNER HEYL, EDWARD RANDOLPH HEYL, HELEN HEYL,

Charles Heath Heyl, Jr., and Delphine Turner Heyl, Infants, by

Charles H. Heyl, Their Next Friend, Complainants.

vs.

LEWIS E. SMOOT, Defendant.

The bill of complaint of the above-named infants, Julia Turner Heyl, Edward Randolph Heyl, Helen Heyl, Charles Heath Heyl, Jr., and Delphine Turner Heyl, by Charles H. Heyl, their next friend, respectfully shows to the Court:

1. That they are infants under twenty-one years of age, and reside with said Charles H. Heyl, their father, who is a citizen of the United States, commorant in said District. They bring this suit in their own right.

2. That said Lewis E. Smoot is a citizen of the United States, resident in said District, and is sued in his own right.

3. That your complainants are seized and possessed in fee simple absolute of the following described real estate, situate and being in the said District, in that portion thereof commonly known as the

“County of Washington,” viz: part of lot or square numbered two (2) shown on plat recorded in Liber County No.

11, folio 41, of the Records of the Office of the Surveyor of said District, contained within the following metes and bounds: Beginning for the same at a point on the north line of Wyoming Avenue, one hundred and twelve (112) feet and fifty-five hundredths ( $55/100$ ) of a foot west from the intersection of said north line of Wyoming Avenue with the west line of Twentieth street, and running thence east on said line of said Avenue, twelve (12) feet and fifty-five hundredths ( $55/100$ ) of a foot; thence north parallel with Twentieth street, one hundred and thirty (130) feet; thence west parallel with Wyoming Avenue, twelve (12) feet and fifty-five hundredths ( $55/100$ ) of a foot; and thence south parallel with Twentieth street, one hundred and thirty (130) feet to the place of beginning.

Also part of lot numbered two (2) in the subdivision made by the heirs of Loveday Pairo of part of lot numbered four (4) of Anthony Holmead's heirs and devisees' subdivision of part of the tract of land known as “The Widow's Mite,” as per plat of said Pairo's heirs subdivision recorded in Liber R. M. H. No. 21, folio 386, of the Land Records of said District, beginning for the same at a point on Garfield (now Wyoming) Avenue, eighty (80) feet east of the southwest corner of said lot and running thence northerly at right angles to said Avenue, one hundred and sixty-two (162) feet; thence easterly fifty (50) feet; thence southerly one hundred and sixty-two (162) feet to said Wyoming Avenue, and thence west along said Avenue fifty (50) feet to the beginning.

That said property is improved by a large and spacious dwelling house, known as premises No. 2009 Wyoming Avenue, containing about fourteen rooms, and is occupied by your complainants and their father as a home. That said property is of great value, to wit, \$45,000., and is one of the most comfortable dwellings in that vicinity.

4. That in the construction of said dwelling house upon said property the same was so placed thereon as to leave an open space on the east side thereof about thirty-two (32) feet wide, and running the full depth of complainants' property, which open space was sown in grass and ornamented with shrubbery, and was designed to furnish light and air to said dwelling, as well as to add to the beauty and comfort of said home.

Along the eastern boundary line of said lot, and about nine (9) inches inside thereof, a hedge was planted on the property of your



complainants, which hedge now remains, except as hereinafter shown, and complainants further show that similar hedges are maintained on other lots adjoining theirs on the west, such hedges being a feature of the block and greatly admired.

5. That the said defendant claims to be the owner in fee simple of the lot next adjoining on the east, being west fifty (50) feet front on Wyoming Avenue by the full depth of lot one (1) which depth is one hundred and thirty (130) feet, in George Truesdell's subdivision of part of the tract of land known as "Widow's Mite," in the County of Washington, said District, as said subdivision is recorded in Liber County No. 12, at folio 65, of the Records of the Office of the Surveyor of said District.

4 6. That the defendant is now constructing upon his said lot a dwelling with the front wall thereof set back about forty (40) feet from the front line of the lot and the west wall thereof on his own land and set back about three feet from the west line of his said lot, the same being the eastern boundary of complainants' land, except that about five (5) feet back from the front wall of said house the defendant has caused a bay-window to be projected out from the west wall to and over the dividing line of said properties, which said bay-window is about eight (8) feet wide. The foundation walls of said bay-window have been laid and the window partially erected, and your complainant is advised that said defendant intends to forthwith proceed with the further construction thereof to a height of about twelve (12) feet.

7. That the defendant pretends that he has the right to construct said bay-window under the provision of section 62 of the Building Regulations of the District of Columbia, which provides as follows:

"That the person or persons appointed by the Commissioners to superintend buildings may enter upon the land of any person to set out the foundation and regulate the walls to be built between party and party, as to the breadth and thickness thereof, which foundation shall be laid equally upon the lands of the persons between whom such party walls are to be built, and shall be of the breadth and thickness determined by such person proper, and the first builder shall be reimbursed one moiety of the charge of such party wall or so much thereof as the next builder shall have occasion to make use of before such next builder shall anyways use or break into the wall, the charge of value thereof to be set by the person or persons so appointed by the Commissioners."

He therefore procured the Surveyor of said District, against the protest of your complainants, to enter upon their said land, and set out the foundations of the intended west line of said bay-window equally upon the lands of your complainants and the defendant's own land, upon the pretext that said proposed wall, eight feet long and twelve feet high, forming the back of said projected bay-window, was a "party wall," and your complainants further show that preparatory to digging the foundation of said last-mentioned wall, the defendants ruthlessly and unnecessarily destroyed the aforementioned hedge along and near the eastern boundary line of their said lot for a distance of about twelve (12) feet, removed the flowers-

therefrom, and otherwise greatly damaged and injured their said property. The said proposed wall, forming as aforesaid the back of said projected bay-window, is eighteen inches thick at the bottom, and is intended to be thirteen inches thick from near the surface of the ground to the top of the wall.

8. Your complainants are advised by counsel, and therefore charge, that said section 62 of the Building Regulations is practically identical with the provision for the regulation of buildings in the Federal City, promulgated by President Washington on the 6 17th day of October, A. D. 1791. Said promulgation purported to be, and was, issued under and by virtue of a grant of power contained in the conveyances from the original proprietors of lands to Commissioners appointed to lay out the Federal City, which declared that the lands so conveyed were subject to "such terms and conditions as shall be thought reasonable by the President, for the time being, for regulating the materials and manner of the buildings and improvements on the lots generally in said City, or in particular streets or parts thereof, for common convenience, safety or order; provided such terms and conditions were declared before the sale of any of the said lots," etc.

Under and by virtue of this grant of power President Washington promulgated certain building regulations, before any sale of the lots conveyed as aforesaid was made, providing that certain named persons might enter upon the lands of any person and "regulate the walls to be built between party and party, as to the breadth and thickness thereof, which said foundation shall be laid equally upon the lands of the persons between whom such party walls are to be built." Thereupon all lands lying within the limits of the Federal City became and were subject to this regulation, so as aforesaid established, and so continue to the present time. But in this connection these complainants show that their said lands were not within the limits of the Federal City, as laid out by the said Commissioners, and are in no way subject to the building regulations so promulgated by President Washington, but to the contrary thereof are entirely free from any right or easement on the 7 part of an adjoining owner of lands to enter thereupon for the purpose of laying out a "party wall" as defined in the building regulations now in force in the District of Columbia.

9. Your complainants further allege and show that under and by virtue of an Act of Congress, approved on the 14th day of June, 1878, authorizing the Commissioners of the District of Columbia to make and enforce such building regulations for said District as they might deem advisable, the said Commissioners have from time to time promulgated certain building regulations for said District, among them being said section 62. But these complainants are informed that said Commissioners do not attempt to enforce the provisions of said section in respect of party walls beyond the limits of the Federal City as originally planned, or to lay out or establish party walls in what, as before shown, has come to be known as the "County of Washington."

And your complainants further show in this connection, upon information and belief, that the defendant on or about the 9th day of September, 1905, made application to the Inspector of Buildings for

said District for a permit to erect said dwelling house to be known as No. 2007 Wyoming Avenue, and in said application stated that there were to be no party walls in said dwelling. That thereafter, on or about the 14th day of September, 1905, said defendant, by a letter to said Inspector of Buildings, sought to amend his said permit by including therein said wall eight feet long, nineteen inches wide at the base, and thirteen inches wide from the ground up as a "party wall."

8 That in response to said letter said defendant was advised by said Inspector of Buildings that, if he, said defendant, located said wall as a "party wall" equally upon the lands of your complainants and the defendant, he, said defendant, must do so on his own responsibility and without authority from the office of said Inspector of Buildings so to do.

10. Your complainants are further advised, and therefore aver, that said section 62 was never intended to have any force or effect outside of the territorial limits of the City of Washington and was never intended to apply to lands lying in the County of Washington, in said District; and that, if it was intended to have such force, effect and application, the said regulation is unconstitutional and void because its effect is to deprive your complainants of their property without due process of law and just compensation.

11. And your complainants are further advised that, even if the said building regulation in respect of the location and construction of party walls applies to lands lying without the territorial limits of the City of Washington nevertheless the said projected wall, so as aforesaid now being erected in part upon land belonging to these complainants, is in no sense a party wall as defined in said regulations. The back of said window is connected with the west wall of defendant's house with bits of wall built on a "splay," as it is known in builders' language, that is, it is not constructed at right angles with said west wall. Wherefore it could not be utilized by these complainants in connection with any building on their lot without an added expense due to the need of cutting out the corners on  
9 complainants' land; and, in addition to being unsightly, is of no practical use to these complainants for any of the purposes of a party wall.

12. And these complainants further show that the hedge growing on the lands of these complainants, and so as aforesaid destroyed by the defendant, was so destroyed during the absence from said District of the said Charles H. Heyl, the father and next friend of these complainants. The said hedge was what is known as California Privet, a hardy plant that with a little care might have been dug up, preserved and replanted after the building operations of the defendant were completed. But the defendant, utterly unmindful of the rights of these complainants in the premises, and without right in that behalf, as hereinbefore shown, himself or by his agents, servants and workmen, entered upon the lands of these complainants and cut down, dug up, destroyed and carried away said hedge for a distance, as before shown, of twelve feet, so that it cannot now again be restored in less than about eight years, and then only at great expense on the part of these complainants.

13. Your complainants further allege that the hereinbefore re-

cited acts of said defendant, with respect to your complainants' property, constitute a trespass, and by reason of such trespass your complainants have already suffered great injury and damage, and, if the defendant be permitted to proceed in the premises, your complainants will suffer irreparable injury and damage.

Wherefore, inasmuch as your complainants are without remedy save in this Honorable Court where such matters are properly cognizable, they pray:

1. That the said Lewis E. Smoot may be made party defendant to this bill and duly served with process, requiring him to be and appear in this Honorable Court by some certain day to be in said process named to answer the premises and abide by and perform such order or decree as may be passed herein.

2. That the defendant may be enjoined and restrained from further proceeding with the erection of said bay-window, or of so much thereof as projects over and upon the lands of the complainants, and may be decreed to forthwith remove said last-mentioned portion of said bay-window and restore the complainants to their original condition in respect of said lands as existing before the commencement of said erection.

3. That a temporary injunction may be issued restraining the defendant from proceeding further with the erection of so much of said bay window as projects as aforesaid over the said lands of these complainants.

4. That a rule to show cause may be issued requiring the said Lewis E. Smoot to show cause, if any he has, on a day to be therein named, why the prayers of this bill should not be granted.

And for such further and other relief as the nature of the case may require and to the Court may seem fit.

And complainants will ever pray, &c. &c.

JULIA TURNER HEYL,

EDWARD RANDOLPH HEYL,

HELEN HEYL,

CHARLES HEATH HEYL, JR.

DELPHINE TURNER HEYL,

By CHARLES H. HEYL,

*Their Next of Friend.*

SAM'L MADDOX,

*Solicitor for Complainants.*

DISTRICT OF COLUMBIA, ss:

Before me, the undersigned, a Notary Public in and for the District of Columbia, personally appeared Charles H. Heyl, who, being first duly sworn according to law, deposes and says:

I have read over the foregoing bill signed by Julia Turner Heyl, Edward Randolph Heyl, Helen Heyl, Charles Heath Heyl, Jr., and Delphine Turner Heyl, by me as their next friend, and know the contents thereof: the matters and things therein stated as of my personal knowledge are true, and those stated on information and belief I believe to be true.

CHARLES H. HEYL.

Subscribed and sworn to before me, this 9th day of January, A. D. 1906.

[SEAL.]

CARLTON FOX,  
*Notary Public, D. C.*

12

*Answer of Lewis E. Smoot and Stipulation.*

Filed April 16, 1909.

In the Supreme Court of the District of Columbia.

No. 25945. In Equity.

JULIA TURNER HEYL et al.

vs.

LEWIS E. SMOOT.

The Answer of the Defendant, Lewis E. Smoot, to so much of the Bill of Complaint of the Complainants against this Defendant in Chancery exhibited, as this Defendant is advised it is material for him to make answer to, answering says:

1, 2 & 3. Answering the first, second and third paragraphs of said bill, this defendant says that he believes the averments of fact therein set forth to be true, except that he is not advised as to the precise value of said dwelling.

4. Answering the 4th paragraph of said bill, this defendant says that he admits the facts therein averred to be true, except as to the position of the hedge, which defendant is informed and believes was set close to the eastern boundary line of said lot and by its roots and branches extended a considerable distance over upon the adjoining property.

5 & 6. Answering the 5th and 6th paragraphs of said bill this defendant admits the averments of fact therein to be substanti-  
13 ally correct, except that this defendant avers the fact to be that prior to the filing of the bill in this cause the projection on the westerly side of defendant's building described in the 6th paragraph of the bill of complaint had been completely constructed and the roof placed thereon and that no portion of the wall complained of in said paragraph was constructed or any work done thereon after the filing of this bill.

7. Answering the 7th paragraph of said bill, this defendant says it is true that he procured the Surveyor of the District to enter upon the land in question and set out the foundation of the west wall of the projection of defendant's building upon the lands of the complainants and the defendant, but defendant further says that the said foundation does not rest equally upon the lands of the complainants and the defendant but projects over and upon the land of the complainants only the distance of 9 inches, said foundation wall being about two feet thick, and that so much of the superstructure of said wall as rises above the grade-line projects over upon the land of the complainants only the distance of 6 inches.

Further answering said paragraph this defendant says that the said wall so laid partly upon the lands of the complainants and of this defendant is a party wall within the definition of the building regulations and is properly placed in part upon the lands of the complainants under said regulations duly promulgated by the Commissioners of the District under authority of an Act of Congress.

8, 9 & 10. Answering the 8th, 9th, and 10th paragraphs of 14 said bill, this defendant says that he is advised that the averments thereof are conclusions of law, the correctness of which this defendant does not admit and as to which he is advised it is not material for him to make any further or other answer.

11. Answering the 11th paragraph of said bill this defendant denies that the said wall so laid in part upon the lands of the complainants and this defendant is not a party wall, but that the same is in all respects a party wall, as the same is provided for and defined in the building regulations of the District of Columbia and that the same can be readily utilized, as such by the complainants should they desire at any time to make use of the same and further answering this defendant says that it is unnecessary that the walls abutting upon and connected with the party wall should meet the same at right angles, nor is it unusual in practice for such abutting or connecting walls to be united with the party wall in the manner described in the bill.

12. Answering the 12th paragraph of the bill this defendant says that it is true that the defendant cut down a portion of the hedge in the bill described, which was growing at the place where the party wall was constructed, but this defendant says that such destruction of the hedge was unavoidable under any circumstances and was done with proper care, that the said hedge is a rapidly growing shrub and can be easily restored by planting new plants along the line from which it was removed. Defendant further states that he does not know and can therefore neither admit nor deny whether the complainants' next friend was absent from the city at the time the

defendant entered upon the lands as alleged, but this defend- 15 ant states that the counsel of the complainants was advised of the purpose of the defendant so to enter upon said land and that said entry upon said land and the destruction of the hedge and the excavation for the wall were begun in the latter part of September and that this defendant supposed until the filing of this bill in January thereafter that the complainants through their next friend acquiesced in the course pursued by this defendant.

13. Answering the 13th paragraph of said bill this defendant says that the averments therein are matters of law, the correctness of which he does not admit and as to which he is advised that he is not required to make any further or other answer.

Further answering said bill this defendant says that he was not aware until after the filing of this bill that the land in controversy belonged to the complainants, but was under the belief that it was owned by their father and next friend and that before entering upon the same he endeavored to reach an amicable agreement with the complainants' next friend and while the complainants' next friend

never actually assented to this defendant's contentions of right, this defendant believed that he had abandoned opposition thereto.

Further answering said bill this defendant says that the complainants have not in and by their said bill shown any cause for relief of equitable cognizance, but that for the alleged wrongs of which the said bill complains, if any such have been committed, they have a full, adequate and complete remedy at law, and this defendant claims the same benefit of this objection as if he had specially  
16 demurred to the bill therefor.

Further answering said bill this defendant says that he is advised that the Act of Congress, approved June 14, 1878, authorizing the Commissioners of the District of Columbia to make and enforce building regulations, does not limit the authority of the Commissioners in that regard to the territory embraced within the boundaries of the original City of Washington, but that the authority so conferred extends throughout the entire District of Columbia, and that the regulations made by the said Commissioners under the authority of said statute including section sixty-two relating to the construction of party walls, are made without restriction as to place and in terms purporting to extend over the entire District.

This defendant further says that he is informed and believes and therefore avers that said regulation as to party walls has been recognized and applied with practical universality throughout the District and beyond the confines of the original City of Washington, and that in the various sections outside the original city limits during the years of development and growth of the city many hundreds of houses have been built with party walls in the manner prescribed and in accordance with the provisions of the said regulation upon the assumption and common consent that the said regulation applied to and controlled the construction thereof.

And having fully answered he prays to be hence dismissed with his reasonable costs in this behalf sustained.

LEWIS E. SMOOT.

17 I do solemnly swear that I have read the annexed and foregoing answer by me subscribed and know the contents thereof and that the matters and things therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

LEWIS E. SMOOT.

Subscribed and sworn to before me this first day of May, A. D. 1906.

J. WM. REILY,  
*Notary Public, D. C.*

It is hereby stipulated, between counsel for complainants and defendant, that the foregoing copy of the answer of the defendant, Lewis E. Smoot, may be substituted in the record for the original answer which has been mislaid from the files.

MADDOX & GATLEY,  
*Solicitors for Complainants.*  
W. G. JOHNSON,  
*Solicitor for Defendant.*

*Joinder of Issue.*

Filed May 9, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 25945.

JULIA TURNER HEYL et al.

vs.

LEWIS E. SMOOT.

The complainants hereby join issue with the defendant.

SAML MADDOX,  
*Attorney for Complainants.*

18

*Testimony on Behalf of Complainants.*

Filed October 12, 1908.

In the Supreme Court of the District of Columbia.

In Equity. No. 25945.

HEYL

vs.

SMOOT.

WASHINGTON, D. C., June 19, 1907—2 o'clock p. m.

Met pursuant to notice at the office of Samuel Maddox, Washington, D. C.

Present on behalf of the complainants, Mr. Maddox.

Present on behalf of the defendant, Mr. Johnson.

Whereupon JAMES P. PERRY, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined.

By Mr. MADDOX:

Q. What is your business? A. I am Assistant Inspector of Buildings for the District of Columbia.

Q. How long have you been so engaged? A. For three years and a half.

Q. Did you inspect the premises built by Mr. Smoot at  
19 No. 2007 Wyoming avenue, in this city? A. Yes, sir.

Q. What did you find there? A. In what way?

Q. For what was the excavation made? A. The excavation for the foundations, and the trenches.

Q. The foundation of what? A. The foundation for the cellar. They were excavated. The whole foundation for the cellar was ex-



cavated and then, of course, below the bottom of the cellar trenches were cut to receive the footings of concrete.

Q. What did you find with respect to the bay window on the west? A. I found the trenches were cut there to receive the concrete footings. The concrete had been put in place and the brickwork started. The surveyor certified to the location of the wall.

Q. Where was this bay window; was it on the same line with or parallel with the adjoining line? A. I believe the survey shows that it is parallel, and is located on the adjoining property to the west to the extent of about five inches.

Q. In the first place, how wide was the concrete? A. Two feet six inches wide.

Q. And how thick? A. One foot.

Q. How far west did that extend from the main wall of the building? A. From the front wall?

Q. From the west wall of the building? A. Are you speaking of the concrete itself?

Q. Yes. A. I should say about eleven inches over the party line, because the center of the concrete is supposed to be underneath the center of the wall. You see the wall was not quite located on the party line. That was five inches away from the center of the party line, from Mr. Smoot's side, going west.

Q. What was built above the concrete? A. A brick wall 18 inches thick.

Q. How high did that go? A. That went up to about the grade of Mr. Smoot's lot, or both lots, and then was faced up with stone.

Q. With what kind of stone? A. It was a granite base.

Q. How high was that granite base? A. The granite base ran up seven inches. Then there was a marble water table on top of that, running up two feet.

Q. Was not the granite base what you call the water table? A. No; there was a granite base and then there was a water table on top of that, and a belt course on top of that again, making a series of offsets.

Q. How was this granite water table backed up. A. It was backed up with brickwork.

Q. Over the top of the marble belt course, what was there? A. Over the top of the marble belt course there was a 13-inch brick wall.

Q. How far did that extend? A. That extended up to the top of the window.

Q. How high is that? A. It is 12 feet 3 inches above the marble base. Then the roof of the bay window was on top of that. It has only been run one story high.

Q. How wide, north and south, is the west wall of that window? A. Ten feet two inches.

Q. That is all brickwork? A. That is all brickwork except the base, the base of course being granite with the marble belt course on top.

Q. How much beyond that brick wall does the foundation pro-

ject, into the lot on the west? A. It must be in the neighborhood of 14 inches beyond the party wall.

Q. Have you made a sketch showing the foundation of that window and an elevation of the window? A. Yes, sir.

Q. Is this it (exhibiting a paper to the witness)? A. Yes, sir, it is.

22 Mr. MADDON: I offer this sketch in evidence.

(The above mentioned sketch is marked "Exhibit C. H. D. No. 1, and the same is hereto attached.)

(Here follows Sketch, Ex. C. H. D. No. 1.)

### Cross-examination.

By Mr. JOHNSON:

Q. Mr. Perry, who made this drawing. A. I did.

Q. From what? A. From actual measurements of the building.

Q. You said in your direct examination, as I understood you, that these foundations extended about five inches over the division line as fixed by the surveyor. A. No; the wall itself extends five inches over, and then, of course, the footings extend about eight inches beyond the face of the wall.

Q. Then when you spoke about something extending five inches beyond, you referred to the brickwork? A. That refers to the brick wall. It is a 13-inch brick wall, and it is five inches beyond the party line.

Q. Are you sure that the west brick wall of the bay window is a 13-inch wall? A. Yes, sir.

Q. On this plat, which has been marked "Exhibit C. H. D. No. 1", you have indicated the line between the two lots? A. Yes, sir.

Q. Then you say the concrete base that you show, is  
23 two feet 6 inches wide? A. Yes, sir.

Q. Is that set equally on both sides of the line? A. Not quite. It does not show that on the sketch.

Q. You think that projects 13 inches over the party line? A. Yes, sir.

Q. You refer to the concrete base? A. Yes, sir.

Q. How deep is that below the surface of the grade of the lot? A. I couldn't tell you that exactly. I can tell you by referring to the plat. It is marked there in figures. To the bottom of the concrete is 7 feet 11 inches.

Q. Of what is that concrete composed? A. It is composed of cement, sand and broken stone.

Q. Did you see it after it had set? A. Yes.

Q. Was it perfectly solid? A. It was perfectly solid.

Q. And how much do you say it was below the surface? A. 7

400

P. 5





feet 11 inches from the grade of the lot to the bottom of the concrete.

Q. How thick is it? A. It is one foot thick.

24 Q. So that it lacks one inch of being eight feet from the surface? A. Yes, sir.

Q. You have indicated here an 18-inch wall. A. Yes.

Q. Is that the wall that you say is composed of brick? A. Yes, sir.

Q. And how much do you say that projects over? A. It is located equally on the concrete footing.

Q. How much does it project over the party line? A. Five inches.

Q. Then on top of that you have a 13-inch wall. A. Yes.

Q. And that projects over 5 inches? A. Yes, sir; of course you understand now I am giving you that measurement under the surveyor's say so. We simply take the surveyor's plat for the location of the wall.

Q. For the location of the wall and lot line? A. Yes.

Q. That is, assuming that the surveyor correctly located the line between the two lots, and the lines of these walls and vertical lines and the thickness of the wall? A. Yes, sir.

Q. And that is how you got these figures? A. Yes, sir.

25 Q. The dimensions you give as to the thickness of the concrete base, the foundation wall and the superstructure are actual measurements? A. Yes, sir.

Q. Without any reference to lot lines? A. Without any reference to that whatever.

Q. How long has it been since you have seen them? A. It is about a year and a half, I guess.

Q. You have not seen them since the work was finished? A. No; the house was about completed the last time I saw it.

Q. Had the earth all been filled in? A. You mean around the walls?

Q. Yes. A. Yes.

Q. It had all been restored? A. All restored; yes, sir.

Q. In the way it was before? A. I couldn't tell you what the conditions were before. We are not called into a building until the trenches are ready to be inspected.

Q. At all events it had all been refilled and sodded? A. All refilled and sodded, and completed.

Q. How long ago was that? A. It was September 10, 1906. I see I have got a date here, and it must have been just previous to that.

JAMES P. PERRY,

*By the Court, by Consent.*

26 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 1907.

\_\_\_\_\_  
*Examiner in Chancery.*

27       SNOWDEN ASHFORD, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined.

By Mr. MADDUX:

Q. You are the Inspector of Buildings for the District of Columbia? A. Yes, sir.

Q. How long have you been so engaged? A. Since December, 1901.

Q. Are you acquainted with the character of the bay window on the west side of Mr. Smoot's house, No. 2007 Wyoming avenue?

A. Yes; I have examined the plans.

Q. When was your attention first called to that? A. I think that my special attention was called to it, outside of a general view of the plans, in connection with the request to me to locate it.

Q. From whom did that communication come? A. From Mr. Smoot.

Q. Have you that letter? A. I think I have.

Q. Do you know how far back that bay window is from the front of the house? A. My recollection is that it is about 12 or 15 feet.

Q. When you received that communication from Mr. Smoot, what did you do? A. I considered the question of locating the  
28       windows there, and concluded that I had not the authority to authorize the location of a portion of that bay window as a party wall.

Q. Why not?

Mr. JOHNSON: I object to any testimony by the witness as to what he thought his legal authority was or was not, for the reason that it is calling for an opinion.

By Mr. MADDUX:

Q. What is the custom of the office with regard to locating party walls outside of the limits of the city? A. They have never been authorized outside of the city.

Q. Outside of Florida avenue?

Mr. JOHNSON: I object to the question on the ground that the custom of the office is irrelevant and immaterial.

A. Outside of Florida avenue.

By Mr. MADDUX:

Q. Were you a defendant in the mandamus proceedings brought by Mr. Smoot? A. No, sir. The suit was brought while I was temporarily absent from the city, against the Acting Inspector of Buildings, and when I came back I had something to do with it.

Mr. MADDUX: I now offer in evidence the proceedings in case at law No. 47966, The United States on the Relation of Lewis C. Smoot, vs. A. M. Poynton, Acting Building Inspector.

29       Mr. JOHNSON: Do you offer the entire record in evidence?

Mr. MADDUX: Yes. I also want to introduce in the record here a copy of the original of a letter attached to the answer of the defendant in this case.

(Said letter is in the words and figures following, to-wit:)

“SEPT. 26, 1905.

“Edward H. Thomas, Esq., Corporation Counsel, &c., The District of Columbia.

DEAR SIR: Col. C. H. Heyl, of the army, owner of house and premises 2009 Wyoming Ave., Washington Heights, objects to having his neighbor on the east extend a bay-window eight feet in length over his land, as is proposed by Mr. Smoot, for two reasons:

1. Because a bay-window cannot properly be considered the section of a party wall.

2. Because the right to build a wall, partly on the lands of an adjoining owner, that is a party wall, is limited to the City proper and does not extend to country property.

And I have advised Col. Heyl to treat as a trespasser any person entering upon his land, be he civilian or District official, for the purpose of either laying out or building the coveted bay-window.

Yours truly,

30 (Signed)

SAM'L MADDUX,  
*Att'y for C. H. Heyl.*”

By Mr. MADDUX:

Q. Did you locate the lines? A. No, sir.

Q. For the reason that you have stated? A. Yes, sir.

Q. Are you familiar with the building as actually located? A. No; I can't say I am except from the plans.

Q. From the plans, how, if at all, would that window differ from a party wall? A. It would differ from an ordinary party wall in the fact that it is shaped in such a way that it would — of little or no benefit to the adjoining owner.

Q. Explain what you mean by that. A. A party wall is a wall located on the dividing line between two premises for their common use, and this window is octagon shape, where sides or splay would have to be altered materially, in order to continue this line for the use of a party wall.

Q. Is that what you call a splay? A. Yes; those sides that are not parallel with the building but are at an angle of 45 degrees with the building, are usually called splays.

Q. Explain what a splay is. A. A splay is a surface that is neither parallel to nor at right angles to some other surface. A very  
31 good example of a splay is the jam of that window in your office. That is the splayed jam. You see it is not square with the window.

Q. Would such a splay as you have spoken of increase the expense of building a wall in connection with it? A. Yes; angles would have to be cut out in order to give a tie between the bay window erected and the new wall.

Q. How would that additional expense compare with the value of a wall of the size of this bay-window? A. I think it would amount to as much as the value of the wall.

Q. Would a 3-foot granite water table, 8 feet long at the foundation of the building, just above the foundation, be considered a part



27 SNOWDEN ASHFORD, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined.

By Mr. MADDOX:

Q. You are the Inspector of Buildings for the District of Columbia? A. Yes, sir.

Q. How long have you been so engaged? A. Since December, 1901.

Q. Are you acquainted with the character of the bay window on the west side of Mr. Smoot's house, No. 2007 Wyoming avenue? A. Yes; I have examined the plans.

Q. When was your attention first called to that? A. I think that my special attention was called to it, outside of a general view of the plans, in connection with the request to me to locate it.

Q. From whom did that communication come? A. From Mr. Smoot.

Q. Have you that letter? A. I think I have.

Q. Do you know how far back that bay window is from the front of the house? A. My recollection is that it is about 12 or 15 feet.

Q. When you received that communication from Mr. Smoot, what did you do. A. I considered the question of locating the  
28 windows there, and concluded that I had not the authority to authorize the location of a portion of that bay window as a party wall.

Q. Why not?

Mr. JOHNSON: I object to any testimony by the witness as to what he thought his legal authority was or was not, for the reason that it is calling for an opinion.

By Mr. MADDOX:

Q. What is the custom of the office with regard to locating party walls outside of the limits of the city? A. They have never been authorized outside of the city.

Q. Outside of Florida avenue?

Mr. JOHNSON: I object to the question on the ground that the custom of the office is irrelevant and immaterial.

A. Outside of Florida avenue.

By Mr. MADDOX:

Q. Were you a defendant in the mandamus proceedings brought by Mr. Smoot? A. No, sir. The suit was brought while I was temporarily absent from the city, against the Acting Inspector of Buildings, and when I came back I had something to do with it.

Mr. MADDOX: I now offer in evidence the proceedings in case at law No. 47966, The United States on the Relation of Lewis C. Smoot, vs. A. M. Poynton, Acting Building Inspector.

29 Mr. JOHNSON: Do you offer the entire record in evidence?

Mr. MADDOX: Yes. I also want to introduce in the record here a copy of the original of a letter attached to the answer of the defendant in this case.

(Said letter is in the words and figures following, to-wit:)

"SEPT. 26, 1905.

"Edward H. Thomas, Esq., Corporation Counsel, &c., The District of Columbia.

DEAR SIR: Col. C. H. Heyl, of the army, owner of house and premises 2009 Wyoming Ave., Washington Heights, objects to having his neighbor on the east extend a bay-window eight feet in length over his land, as is proposed by Mr. Smoot, for two reasons:

1. Because a bay-window cannot properly be considered the section of a party wall.

2. Because the right to build a wall, partly on the lands of an adjoining owner, that is a party wall, is limited to the City proper and does not extend to country property.

And I have advised Col. Heyl to treat as a trespasser any person entering upon his land, be he civilian or District official, for the purpose of either laying out or building the coveted bay-window.

Yours truly,  
30 (Signed)

SAM'L MADDUX,  
*Att'y for C. H. Heyl.*"

By Mr. MADDUX:

Q. Did you locate the lines? A. No, sir.

Q. For the reason that you have stated? A. Yes, sir.

Q. Are you familiar with the building as actually located? A. No; I can't say I am except from the plans.

Q. From the plans, how, if at all, would that window differ from a party wall? A. It would differ from an ordinary party wall in the fact that it is shaped in such a way that it would — of little or no benefit to the adjoining owner.

Q. Explain what you mean by that. A. A party wall is a wall located on the dividing line between two premises for their common use, and this window is octagon shape, where sides or splay would have to be altered materially, in order to continue this line for the use of a party wall.

Q. Is that what you call a splay? A. Yes; those sides that are not parallel with the building but are at an angle of 45 degrees with the building, are usually called splays.

Q. Explain what a splay is. A. A splay is a surface that is neither parallel to nor at right angles to some other surface. A very  
31 good example of a splay is the jam of that window in your office. That is the splayed jam. You see it is not square with the window.

Q. Would such a splay as you have spoken of increase the expense of building a wall in connection with it? A. Yes; angles would have to be cut out in order to give a tie between the bay window erected and the new wall.

Q. How would that additional expense compare with the value of a wall of the size of this bay-window? A. I think it would amount to as much as the value of the wall.

Q. Would a 3-foot granite water table, 8 feet long at the foundation of the building, just above the foundation, be considered a part

of a party wall under the building regulations? A. If below the first floor, yes.

Q. Then anything above the first floor must be of what material? A. It must be brick, unless otherwise agreed upon between the parties.

Q. You mean between the adjoining owners? A. Yes.

Q. Have you the correspondence between you and Mr. Smoot?

A. Yes, sir. (The witness produces letters.)

32 Q. This is your record pertaining to the erection of this house, is it? A. Yes.

Mr. MADDOX: I offer this correspondence in evidence.

It is stipulated by and between counsel that the originals of said letters may be copied into the record, and the original return to the witness.

The said letters are in the words and figures following, to-wit:

Office of the Corporation Counsel, Columbian Building,

JUNE 5, 1907.

Mr. Snowden Ashford, Building Inspector, D. C.

DEAR SIR: I have the honor to return herewith letter of L. E. Smoot dated Sept. 14, 1905 addressed to the Building Inspector, and a copy of his reply; also copies of permits dated Sept. 9th, '05, (two copies); also certificate of Approval; also permit issued by the Permit Clerk dated Sept. 9th, 1905, and a letter to Mr. Smoot from Joseph E. Wollard of Fairfax, Va.

Mr. Maddox has requested me to return these papers to you so that he might make use of them.

Very respectfully,

E. H. THOMAS,  
*Corporation Counsel.*

(Stamped:) Received, June 5, 1907. Insp. of Bldgs., D. C."

33 Jos. E. Willard.

C. Vernon Ford,  
Commonwealth's Attorney.

Sep- 9, 1905.

Willard & Ford,

Attorneys at Law,

Fairfax, Va.

695

Sep- 9, 1905.

WYATT BUILDING,  
WASHINGTON, D. C., Sept. 8, 1905.

Mr. L. E. Smoot, Foot 3rd Street S. E., Washington, D. C.

DEAR SIR: Replying to yours of the 4th, permission is hereby given you to erect a temporary office on my lot northwest corner of 20th Street and Wyoming Avenue, N. W., Washington, D. C., with

the distinct understanding that same shall be placed on the north-west corner of said lot with the front on alley, and that you shall remove same at any time I may notify you in writing; and that in the event no such notice is given you will remove the office upon the completion of your dwelling, and upon such removal at any time will make good any damage which may occur in any manner to the said lot. All the above at your expense.

Trusting the above is satisfactory to you, I am,

Yours very truly,

JOS. E. WILLARD,  
Per L.

34

695

Sep- 9, 1905.

No. — 90 L. S. P. C. O., Vol. 25, Page 239.

Engineer Department, District of Columbia.  
Office of the Permit Clerk.

WASHINGTON, *Sept. 9, 1905.*

SIR: Permission is hereby granted you erect a four (4) foot terrace, the same as on adjoining properties, front of 2007 Wyoming Avenue N. W.

(Stamped): "This permit Oct. 9 1905 expires."

The work to be done at your own risk and expense under the direction and subject to the requirements of this Office; to be commenced and completed within thirty days after date.

By order of the Engineer Commissioner, D. C.

H. M. WOODWARD,  
*Permit Clerk, D. C.*

To A. C. Wycoff, 2007 Wyoming Ave., for L. E. Smoot.

35

(Paper slip attached.)

695

Sep- 9, 1905.

Plat of ground returned to Surveyor's Office — 190—.

Office of Inspector of Plumbing, District of Columbia.

*Certificate of Approval of Plan.*

695

Sep- 9, 1905.

WASHINGTON, *Sept. 7, 1905.*

This certifies that A. F. Harlan has filed with me a plan of Plumbing and Drainage Work proposed to be placed in and upon building erected on Lot W. 50 of 1 Square 1 Wid. Mite to be known as No. 2007 Wyoming Av. N. W. owned by Lewis E. Smoot, and that upon

careful examination I find said plan satisfactory, and in accordance with the regulations governing plumbing and house drainage in the District of Columbia, and I hereby approve the same.

RICHARD A. O'BRIEN,  
*Act'g Inspector of Plumbing.*

Class ———

No. ———

36 No. brick required 90 M—F

Permit No. 695

*Permit to Build.*

Office of Inspector of Buildings.  
District of Columbia.

WASHINGTON, *Sept. 9th*, 1905.

This is to Certify, That L. E. Smoot has permission to erect one two story & attice brick dwelling Lot 1, block — square — subdivision Widow's Mite, No. 2007 Wyoming Avenue N. W.

House number must be verified before being placed on buildings, in accordance with application No. 695 and drawings on file in this office, and subject to the provisions of the Building Regulations of the District.

The right is reserved to examine the buildings as often as may be necessary while in course of erection, and order any change in the construction that may be deemed requisite to insure sufficient strength, solidity and safety from fire.

This permit grants no right to change the grade or formation of any public terrace, parking or pavement; nor to build leads, coping or terrace steps outside the building line.

Permission is granted to lay a plank roadway across pavement. Deposit has been made to repair pavement, clean roadway and to cover cost of any damage to public property. Deposit No. 5026.

Amount, \$43.00.

37 By order of the Commissioners, D. C.  
Fee Paid, \$2.00.

S. ASHFORD,  
*Inspector of Buildings.*

No projection beyond the building line.

Duplicate.

(Stamped:) Walls shall not be erected to a greater height than (1'-0") above footings until their correct location is certified by Surveyor D. C. See Sec. 27, Building Regulations.

Engineer Department,  
District of Columbia.

Office of Inspector of Buildings. 695 A ½.

WASHINGTON, *Sept. 9th*, 1905.

This is to Certify, L. E. Smoot (owner) has permission to erect a temporary frame office or storage shed on the private property ad-

joining the new building under construction at 2007 Wyoming Ave. N. W.

Shed to be 10 x 16 feet, not over 11 feet high, and is not to be in contact with any dwelling or constructed so as to allow water to flow upon adjoining property or upon the sidewalk.

If the shed is located on the roadway, it must be confined to the space allotted to building material. (See Sections 145 to 156, Building Regulations.)

Shed to be removed within 90 days, or when so ordered by the Inspector of Buildings.

Not to be used for advertising purposes.

[Fee, One Dollar.]\*

By order of the Commissioners, D. C.

A. C. Wycoff, Builder, 2007 Wyoming Ave. Address.

Paid \$ No fee.

S. ASHFORD,  
*Inspector of Buildings.*  
F.,

Main Office: Foot of Third Street S. E.  
L. E. Smoot, Sand and Gravel.

WASHINGTON, D. C., *Sept. 14th, 1905.*

Mr. Snowden Ashford, Inspector of Buildings, Washington, D. C.

DEAR SIR: Referring to permit for house at 2007 Wyoming Ave. N. W. issued Sept. 9th, 1905, will say we wish to have same amended, as follows; In application—Question 17 “Thickness of party wall.” “Basement” 18” first floor 13”. The plat which accompanied application has been marked opposite party wall as follows;

“Distance”—Wall of house at this point is 6½” over line—scale too small to show by rule. Basement wall 9” over.

The above questions were not answered correctly, in original application, through inadvertence and mistake.

Please make change in permit, as above, and oblige

Yours truly,

L. E. SMOOT.

A. F. H./H. F. H.

Copy.

SEPTEMBER 15, 1905.

Mr. L. E. Smoot, foot of Third Street S. E., Washington, D. C.

DEAR SIR: Your communication of September 14th, notifying the office of your change of plan and plat to locate party wall at 2007 Wyoming Avenue received, and in reply, beg to say that notice will be filed with the permit with the understanding that the party wall is located on your own responsibility without authority from this

[\* Words enclosed in brackets erased in copy.]

office, as I do not, at the present time, locate party walls outside of Florida Avenue or Washington City proper.

Very respectfully,  
(Sgd.)

S. ASHFORD,  
*Inspector of Buildings.*

R. L. B.

40

Copy.

SEPTEMBER 21, 1905.

Mr. L. E. Smoot, Foot of Third Street S. E., Washington, D. C.

DEAR SIR: Replying to your letter of the 16th instant in which you request the Inspector of Buildings to set out the foundations and regulate the position of party wall for 2007 Wyoming Avenue, N. W.

From your letter I judge you have complied with section 26 of the Building Regulations and obtained the requisite building plat from the Surveyor, D. C. I would therefore call your attention to section 27 of the building regulations which sets forth how you may have walls verified by said Surveyor.

I would also respectfully call your attention to section 1589 of the Code, D. C., which prescribes the Surveyor's duties in reference to the location of party walls.

Very respectfully,  
(Sgd.)

A. M. POYNTON,  
*Act. Insp. of Bldgs.*

R. L. B.

41 By Mr. MADDIX:

Q. Do you know whether or not this marble belt course is above or below the first floor? A. Yes; to the best of my recollection it is below the first floor.

Q. Would that show on the plans in your office? A. Yes; that shows on the plans.

Cross-examination.

By Mr. JOHNSON:

Q. Mr. Ashford, it is a part of your official duty to approve the plans of buildings before any permit for their erection is granted; is it not? A. Yes, sir.

Q. As a matter of fact I suppose it is not physically possible for you to examine and pass upon all of the plans that are submitted? A. No, sir.

Q. You do that through your assistants? A. Through my assistants; yes, sir.

Q. Does that include the examination of the dimensions of buildings? A. No; not necessarily so.

Q. Does it include the material and size of walls? A. Yes; it includes the materials, the thickness of the walls and the heights of the walls.

Q. And the interior construction? A. The interior construction.

42 Q. Have you exercised that authority with respect to houses beyond Florida avenue? A. Yes; anywhere in the District.

Q. How many houses, outside of Florida avenue, have been built under permits from the District, during your regime as Building Inspector, in which the division walls were built as party walls, resting partly on both lots. A. I suppose two thousand.

Q. Beyond Florida avenue? A. Yes.

Q. Do you know any prior to the time of your holding the office of Inspector? A. Yes; when I was Assistant Inspector.

Q. Have you any idea how many houses were built in that way at that time? A. Yes; I should say there were two thousand more—the whole of Columbia Heights and a great deal of Mt. Pleasant and Lanier Heights.

Q. Do you remember the fact that Mr. Poynton was Acting Inspector during your temporary absence in that summer? A. Yes.

Q. Do you recall when you went away? A. I think I went away about the 17th.

Q. Of what month? A. Of September.

43 Q. Do you know how long you were gone? A. Yes; two weeks. That is the usual summer vacation.

Q. As a matter of fact, did you, yourself, have anything to do with these proceedings in court, the mandamus proceedings, brought against Mr. Poynton? A. Yes; my recollection is that I did. I know that I was called upon there.

Q. Are you sure you were here in the city at the time? A. Yes; I wrote Mr. Smoot a letter on the 15th of September, either a day or two days before I went away, and left instructions with Mr. Poynton. I sent the letter to Mr. Smoot before I left and the case did not come up until I returned. I was only away for about two weeks.

Q. Are the papers which you have brought here all of the papers and correspondence with relation to the matter, that you know of? A. All that I know of. They were all turned over to the Corporation Counsel's office. The whole case was sent over to him and this is what I got back from him.

Q. You stated that a party wall above the first floor must be of brick. By the first floor do you mean the first main floor of the house? A. The first floor above grade.

Q. How is the material of a party wall regulated? A. That is regulated under the old general regulations of George Washington.

44 Q. Do you mean it specifies the material? A. It does not specify the material, but the thickness of the material.

Q. Do you mean that it specifies whether it should be of brick or stone? A. Yes; that it should be brick or stone of a certain thickness.

Q. Do you understand that regulation to control whether the material of a wall shall be brick or stone, and that it cannot be any other material than brick? A. No; not directly. It does not state that it shall be brick.



Q. Do you mean that there is any regulation, among the regulations covering the erection of buildings, promulgated by the Commissioners, under authority of an Act of Congress, specifying the material of which a party wall shall be built? A. Yes, sir; indirectly. It specifies that it shall not be stone and that it shall not be concrete, and that practically brings it down to brick, by elimination.

Q. Then when you speak of that, you mean that is the way you construe the regulation? A. That is the way I construe it. I might add, that the regulations, at one time, stated that a party wall should be not less than 13 inches thick, or a brick and a half.

Q. The west wall of this bay-window is built at right angles  
45 to the front line of the lot; is it not? A. Yes, sir.

Q. And its two faces, the interior and exterior, are parallel with the division line? A. Yes, sir.

Q. How does that wall differ from any other party wall? A. At each extremity of the wall it runs off at an angle of 45 degrees.

Q. That wall does not run off? A. Yes; it is a continuation of that wall. The wall returns, as we call it. The same wall is brought around and is bent in at angle of 45 degrees.

Q. How can you say that a party wall bends around, any more than you can say that the side walls bend around? A. The side walls may bend around. There is no reason why they should not.

Q. Why, are they not separate walls, and merely detached? A. Well, you can take it in that way and say that this west wall is a wall parallel to the face of the house and is a continuation of the side wall. It is all in one; there is no line of demarkation.

Q. And so is the front wall? A. Yes; so it is on all houses. The front wall is a return of the side wall and the side wall is a return of the front wall.

Q. Suppose a man builds a house back from the building  
46 line and has two side walls parallel to the adjoining owner's line, and has party walls on them; and then instead of building his front at right angles to the two side walls he places his front wall at an oblique angle, or the same angle that this bay window is. Is there anything to prevent those walls from being party walls? A. If he sets back from the front of the lot he may do that; but he creates a condition that imposes additional hardship upon the adjoining owner.

Q. Is there anything in the regulations to compel a man to build his house on the front building line, in order to have the privilege of a party wall? A. No; but there is something in the regulations that prevents him from putting up a window on the front of his house which is to come within nine inches of the party line.

Q. The bay-window, however, projects out into the street. A. Not necessarily so. That splayed side of the bay window must be nine inches from the party line, so that there would be an angle there of nine inches long, at right angles; and it is also required that the man should recess his front wall four inches to the party line leaving a slot for the adjoining owner to build into, in continuing the wall.

Q. To built against? A. Yes, sir.

47 Q. That is the purpose of it? A. Yes.

Q. The use of the wall itself, to support joist or things of that sort, is not affected by the splay of the bay window at all; is it? A. No.

Q. And the capacity and strength of the wall is not affected? A. No.

Q. Nor the ability to use the west face of it as a party wall? A. No; it is not affected, in that extent of the wall.

Q. What other right of the use of a party wall has an adjoining owner than the right to support a structure of his own? A. He has the right to build on it or to continue it.

Q. That is, he can have support, by resting joist and other structures on its face? A. Yes.

Q. And he may continue it in both directions, by building against the four-inch projecting space? A. Yes; he would have to build against more than four inches. He would have to build against 13 inches. The four-inch recess I referred to is only in the front of the house, so as to give each owner his full width, on the front part of

48 the house. But the practice and requirement, where you extend the party wall, was that it should be a square bay, perfectly square; and all they would have to do, if that was a square bay-window, would be to put a strip, which they always do, right over that at that end of the building, from the wall. That holds the wall there so there is no side motion and no settlement, if there is any settlement in the new work, instead of leaving the old work this strip holds it and it has to go down in alignment with the old work. In the absence of that you would have to cut the wall out and tooth it in, as we call it, at every fifth brick, to cut into the wall.

Q. What is to prevent the continuing of this west wall in each direction, if the adjoining owner wishes to do so? A. I don't know of anything that would absolutely prevent it.

Q. Is there any mechanical difficulty about it? A. There is a little mechanical difficulty in joining onto that splayed wall. You would have to cut that corner right out until you get a square corner, cut into it and slot it right down, so as to get your brick there to hold.

Q. That is the only thing? A. That is the only thing.

Q. Just a little coldchisel work? A. Yes.

49 Q. As a matter of fact there is a projection or recess of four inches? A. Yes.

Q. And the other half of the party wall is over on Mr. Smoot's line? A. Yes.

Q. And the only difference between that and the other party wall is that this adjoining wall to the bay window runs at an angle less than a right angle? A. Yes; and that window jam is splayed for the height of the window and would have to be notched out, to give you a chance to butt the party wall against the right angle abutment, instead of the splay.

Q. As a matter of fact, do you remember that before this wall was actually built there was change made? A. A change made in the plans?

Q. Yes; in the plan of that wall. A. No; I do not.

Q. Do you remember that Mr. Fuller, the architect, came down to the office and brought you some change in it? A. Yes; I remember about some change in the thickness of the wall. I thought you were talking about the contour of it.

Q. That was changed by letter? A. Yes.

Q. By this letter of Mr. Smoot's of September 14, 1905? A. Yes, sir.

50 Q. Do you know of any regulation as to how long a party wall has to be? A. No, sir; but I was in hopes that we were going to get some enlightenment on that question, in Mr. Hamilton's case; but we did not.

Q. You did not, personally, go up there to make any measurements of these walls? A. No, sir.

Q. And, as I understand it, you did not personally inspect them? A. No, sir; not officially. I only went up to see what a nice looking building it was, after office hours.

Q. When you speak of the bay-window being octagonal instead of hexagonal, do you refer to the turns that it makes in turning into the main wall? A. Yes, sir.

Q. That would give it what you describe as its octagonal character? A. Yes, sir; the sides are not equilateral; but the fact that it is fixed to the main wall makes it what we call an octagonal window.

Q. I believe you are not a mechanic? A. I have worked at most of the trades, except plumbing.

Q. You do not consider yourself a mechanic; do you? A. No.

51 Redirect examination.

By Mr. MADDOX:

Q. You say there have been built, in the last eight or ten years, three or four thousand houses outside of Florida avenue. You approved the plans of those houses, I suppose? A. Yes, sir.

Q. Did you or not locate any of the party walls? A. No, sir; we never locate the party wall. The permits distinctly state that houses are to be built within the confines of the lot or lots named. Every permit that is issued restricts the building to the premises named in the permit. As I stated, they locate party walls outside of these permits, by virtue of an easement or regulation, which was promulgated years ago; but we do not even authorize it in the city.

Recross-examination.

By Mr. JOHNSON:

Q. You do not authorize the laying of a wall on adjoining ground anywhere? A. No, sir.

Q. In the city or out of the city? A. No, sir.

Q. And these party walls, resting in part on the two adjoining lots, have been built in the manner you have stated, both in the city and without the city? A. Yes sir.

52 Q. And when you speak about the permits limiting the building to the lot mentioned in the permit, you refer also to permits withing the city as well as without the city? A. All permits.



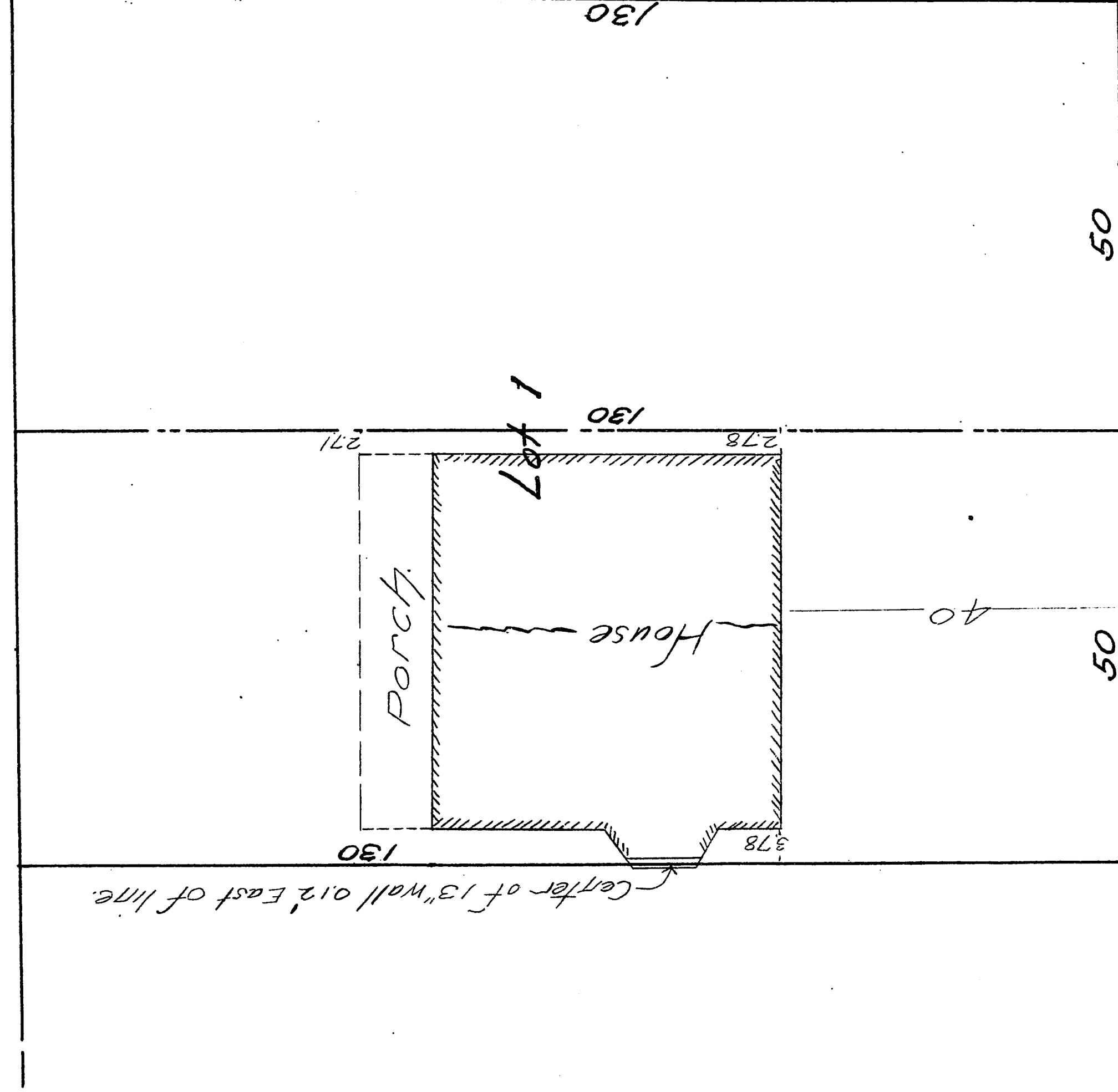
## Surveyor's Office,

DISTRICT OF COLUMBIA.

Washington, Sept. 17th 1906.

Plat of Survey and locate house on West 50ft. of lot 1.  
 Truesdell subd. of Widows Mite.  
 5577.

Exhibit C.H.D. No 2



Wyoming Ave.

I hereby certify, That the foregoing plat is correct in accordance with Law and Record. Actual survey made  
 this 15th day of Sept. 1906., for Samuel Maddox.

M. E. Hagen  
 Dist. Surveyor, District of Columbia.

OK pmb

alg



Q. There is no difference in the permits? A. There is no difference. The party line shown on the plans is purely an arbitrary arrangement. I do not know whether it is within the confines of a man's property or not. There is absolutely no way to ascertain that his lot is only 16 feet wide, because it says that it is 16 feet wide, and I do not undertake to ascertain that. I give him a permit to build on his lot, whatever lot he names in his application, and on no other lot.

Q. And a house of the character and description shown in the plans and specifications? A. Yes.

By Mr. MADDUX:

Q. Who, then, determines where the party line shall go? A. That takes the joint action of the surveyor's office and my office. If the applicant elects to have a survey made, we give the surveyor's office a certificate and he locates the party wall, according to the lot on the statement. Sometimes they will elect not to have a party wall; but the plans show just the same. On this plat that  
53 goes to the surveyor they indicate whether they intend to build a party wall or not, and he locates it and certifies to it as a party wall. The only connection I have with it is to see that, if it is a party wall, it is built according to the regulations for party walls as to thickness, dimensions, &c.

SNOWDEN ASHFORD,

*By the Examiner by Consent.*

Subscribed and sworn to before me this — day of —, 1907.

*Examiner in Chancery.*

Mr. MADDUX: I now want to offer in evidence the plat of survey of the location of house No. 2007 Wyoming avenue, made by the surveyor of the District of Columbia.

The above mentioned plat is attached hereto, marked "Exhibit C. D. H. No. 2."

(Here follows plat, Exhibit C. D. H. No. 2.)

54 JAMES T. WILSON, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined.

By Mr. MADDUX:

Q. Where do you live? A. No. 1825 F street northwest.

Q. What were you doing in the summer of 1905? A. I was working for the Quartermaster, and taking care of Colonel Heyl's house.

Q. What house is that? A. No. 2009 Wyoming avenue.

Q. Where was Colonel Heyl? A. He was supposed to be at Cape May.

Q. When was your attention first directed to the preparation for the building of the house on the lot adjoining Colonel Heyl's house on the east? A. I don't know the exact date; but it was in that month.

Q. What directed your attention to it? A. By some pegs being drove on the inside of the hedge. I asked the contractor what those things were doing there and he said they were going to build a party wall and going to cut that hedge out. I said: "Well, I am taking care of this property for Colonel Heyl, and I would like to notify him." So he said: "Well, I don't know; I've got orders to cut it out. I said: "You will wait until I notify him?" He said: "I will wait a little while, probably a day or two." Then I written  
55 to Colonel Heyl immediately, and that very evening, I believe it was, or either on the second or third day, I went there and the hedge was cut.

Q. When was it cut; in the daytime or at night? A. It was cut in the day, because I went up in the morning and it wasn't cut; and when I went back in the afternoon it was gone. I didn't see no hedge at all.

Q. What kind of a hedge was that? A. I don't know exactly.

Q. How high was it? A. About so high (indicating).

Q. About four feet high? A. Every bit of that.

Q. Where was the hedge you are speaking of? A. It was between Colonel Heyl's and Mr. Smoot's ground.

Q. All the way from the front to the rear? A. Yes, sir; running all the way back.

Q. What became of the hedge after it was cut down? A. I couldn't tell you that. I never seen it no more.

Q. It was carried away, was it? A. I suppose it was carried away, because I didn't see it.

Q. Do you remember whether it was cut before the day Colonel Heyl got here from Cape May? A. Yes; before he got here.

56 Cross-examination.

By Mr. JOHNSON:

Q. Wilson, who was it you talked with, whom you call a contractor? A. I suppose it was the contractor.

Q. You don't know his name? A. No, sir; I don't know his name.

Q. The first you knew about it was you saw some pegs driven? A. Yes, sir.

Q. Then you asked this man about it? A. Yes, sir; I did.

Q. And he told you that he was going to build a party wall? A. That's what the contractor told me.

Q. Do you remember where those pegs were? A. They were just on the inside of Colonel Heyl's hedge. They stretched a line, a piece of fish line.

Q. Have you seen the house of Mr. Smoot, since it was built? A. Yes, sir; I have seen it time and time again.



Q. Have you seen the bay window? A. Yes, sir.

Q. Were those pegs driven where the bay window now is? A. Yes, sir; and that's where the foundation was dug.

57 Q. Those are the pegs to which you refer? A. Yes, sir.

Q. How long was it before the hedge was actually cut that you first saw those pegs? A. I think it was a couple of days. I told him: "It will take me two or three days to notify Colonel Heyl." He says: "I don't know about that. If my work don't come that way, I won't cut it until you hear from the Colonel."

Q. Was anything done at that time? A. Yes, sir; they had been digging there.

Q. There was work going on? A. Yes, sir; yes, indeed.

Q. Did Colonel Heyl come on here? A. He didn't come on here until after the hedge was cut.

Q. Did he come on? A. Yes, sir; I don't know how long it was afterwards; but it was possibly three or four days, or something like that, afterwards.

Q. Did you see anybody else besides this contractor? A. I seen a lot of workmen out there.

Q. Did you communicate with anyone else except Colonel Heyl? A. Yes, sir; after I heard from Colonel Heyl I did.

Q. With whom? A. With Mr. Maddox.

58 Q. How long was it after you communicated with Mr. Maddox that this hedge was cut? A. Why, the hedge was cut then.

Q. Are you sure of that? A. Yes, sir; it was cut then, because I didn't get a telegram from Colonel Heyl. I got a letter, and then when Colonel Heyl came on here the hedge was cut. I am sure the hedge was cut before Mr. Maddox went up there, because it was cut the very next day, or the day after—I don't exactly remember. I think it was about the second or third day, to the best of my recollection. I went up there in the morning and when I went back in the afternoon it was gone, and I never seen it no more.

Q. Were you at the house daily? A. Twice a day; morning and evening.

Q. All through the summer? A. Yes, sir; every day, and once on Sunday.

Q. Can you tell us how long it was after you first noticed work being done before you noticed them driving any pegs on Colonel Heyl's side of the lot? A. No, sir; I don't just know the day. Probably it was a week and probably more, because they dug pretty good foundations there and they dug it out pretty fast. Probably it was not that long. I don't want to tell nothing but what I know, because I never taken no account of what they were doing, until I seen the pegs drove there.

Q. You say you wrote to Colonel Heyl? A. Yes, sir.

59 Q. Did he send you any reply? A. I think he sent me a letter.

Q. What did you do with it? A. I suppose I destroyed it. I never do keep any mail like that.

Q. Do you remember whether you dated your letter to Colonel

Heyl? A. Yes, sir; I did. I hardly ever write a letter without dating it.

Q. So that if he has that letter it will show the date you wrote him? A. Yes; it will show the date I written him.

JAMES T. WILSON,  
*By the Examiner, by Consent.*

Subscribed and sworn to before me this — day of —, 1907.

\_\_\_\_\_,  
*Examiner in Chancery.*

60 CHARLES H. HEYL, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined.

By Mr. MADDOX:

Q. What is your business? A. I am a Colonel in the United States Army, retired.

Q. Where do you live? A. I live at No. 2009 Wyoming avenue, Washington, D. C.

Q. Who owns that property? A. It belongs to the estate of Mrs. Heyl, deceased.

Q. Who are the five persons named as complainants in this bill? A. Julia Turner Heyl, Edward Randolph Heyl, Ellen Heyl, Charles E. Heyl, Jr., and Delphine Turner Heyl.

Q. Are they all infants? A. Yes, sir; they are all minors, and the heirs at law of Mrs. Heyl, who died intestate.

Q. How is that property improved? A. It is improved by a Colonial house.

Q. On which side of the lot? A. On the west side of the lot, 18 inches inside of the west line.

Q. How far back from the street? A. 40 feet from the street front.

Q. How wide is the house? A. The house is 30 feet wide, and there is an opening on the side of about  $31\frac{1}{2}$  feet. The  
61 lot is  $62\frac{1}{2}$  feet wide.

Q. Then the lot to the east is open and unbuilt upon? A. Yes, sir.

Q. Between you and the property of Mr. Smoot? A. Yes, sir; and the entire lot is enclosed by a privet hedge, about  $3\frac{1}{2}$  feet high, which was planted there in the fall of 1898 and the spring of 1899. At the time it was cut out it was about 3 or  $3\frac{1}{2}$  feet high.

Q. And seven or eight years old? A. Yes, sir.

Q. Are there hedges like that in that vicinity? A. All the properties in that neighborhood have enclosures of the same kind, on the north side of Wyoming avenue, continuing over to Colonel Truesdell's place on Columbia Road.

Q. How were the houses built in that locality until Mr. Smoot came there? A. They were always built in a lot with grounds surrounding them. There is not a house that is built on lot lines.

Q. You mean there are no party walls? A. I mean that they are all built inside of the lines, except the Smoot house, which was built

about two years ago, and only a portion of that is built on the party line.

Q. Where were you in the summer and fall of 1905? A. 62 I was at Cape May, New Jersey.

Q. Do you know when you first heard about this proposed building? A. It was sometime during September; but I cannot tell the exact date. It was either the fore part of September or the latter part of September. I have no way of refreshing my memory about that, except perhaps you may have a letter from me written about that time and you can tell by referring to it. (The witness examines a letter.) It was about the middle of September. This letter is dated September 16th and that was a day or two afterwards. I think very likely September 16th was on Saturday, because I say in the telegram "Wait until Monday for reply. Have written today." So the probabilities are that knowing you would not get it on Sunday and would get it on Monday morning——

Q. From whom did you hear about this work being done? A. The first intimation I had of it I received a letter from James Wilson, my man, who had charge of my house during the summer, that they were building next door and were going to cut in a foundation and take the hedge out.

Q. Do you remember when you returned to the city that fall? A. It was in the early part of October. I think it was about the 14th or 15th; but I am not quite sure whether it was so late as that. That is my impression.

Q. When you returned what was the condition of the 63 hedge? A. Before that I came up here, as soon as I heard from James. He wrote me about it and I received the letter too late to come that day. One day intervened and I came the following day. When I came up the hedge was gone. In fact I started in there with a controversy with a man who was digging with a pick, and grubbing out the roots, and taking out what was left of the hedge. He told me that he was just working under orders. I could not find anybody in authority. I did not know with whom to talk. This man, whom I afterwards understood was a builder, I did not see at that time. The man I did talk with was simply one of the laborers who told me that he was working under orders. I could not find anybody in authority, and this man, while I was there, never came to see me about it.

Q. You came up specially, then, from Cape May to see about it? A. I came up to inquire into it.

Q. As soon as you heard from James? A. Yes; only one day intervened.

Q. Was that before these letters were written? A. It was before the letter was written to you.

Q. Then it was before September 16th? A. Yes, sir; because 64 when I came up James had been to see you, in the meantime. My correspondence, after that, was with you.

Q. Were there any remnants of the hedge there? A. None whatever. There were a few roots that the man was grubbing out when I saw him on that day. I left Philadelphia on the early train and got here about noon. It might have been one or two o'clock when I saw him, and the hedge was gone then. Whether it had

been taken out the day before or on that morning, I couldn't say. I don't know.

Q. How long after you heard from James was it before you started up here? A. There was one day intervened after I got his letter. I could not leave the next day, so I took an early train the following morning. I never did see these people next door and did not know about their intentions, or whether they expected to build or entertained the idea of building a party wall or not. I never had an opportunity of meeting them afterwards, and did not know anything about it.

Q. When you came up the first time, did you see Mr. Fuller, the architect? A. No, not the first time. I did not know Mr. Fuller was in charge the first time I came.

Q. When you returned in October, did you see him? A. Yes; I saw Mr. Fuller.

Q. Did he show you the plans? A. Yes, he showed so much of the plans as referred to the bay window.

65 Q. What, if anything, was said then about a projecting cornice? A. I said to Mr. Fuller: "How much room have you on the other side?" He said there was about 2 feet 2½ inches. I said: "Why don't you put your house the other way, so that you won't have to go over on my line?" He said that they did not have room enough; that they had to go over on this side, because it left too little room on the other side. We were then looking over the ground plan. He showed me the plan of the bay-window and it had a long cornice on it. I said to him: "You are already over my line and you cannot come over further with that cornice." He said: "I guess that is so." Subsequently I noticed that has been changed, although the plan did provide for a projecting cornice.

Q. What, if anything, did you say to him about taking the hedge away? A. I do not recall, except that I expressed my views strongly to him, and stated that I simply thought the whole thing was an outrage, and that it was unjust; that I had never been consulted and never knew anything about it; and that they did not give me any opportunity, amicably, or in any other way to settle the question.

Q. Where was that hedge? A. It was inside of my line, on property between me and what had been Mr. Truesdell's property before. It was afterwards sold to Willard, and Willard, I believe, sold it to Smoot.

66 Q. Do you recall how far inside your line it was? A. I can't exactly recall. I was always under the impression it was about nine inches inside the line. I think it was fully eight inches inside. The hedge was not set out by me. It was set out while I was away and Colonel Truesdell himself supervised and superintended it. He put the hedge back purposely, knowing it would spread out, and he did not want it to be on the adjoining land.

Q. Did you ever see Mr. Smoot or try to see him? A. I never saw him, but I tried to see him. I called him up several times on the 'phone and once his clerk or bookkeeper came up to see me, as he said, to arrange matters. But I could not arrange any matters with him, because I did not consider that he was in authority to

decide a question of that kind with me. I talked with him and told him I would like to talk the matter over amicably and settle it, if possible, with Mr. Smoot. My recollection is that he said Mr. Smoot was away or had been away, or was not well. At any rate, I never heard from him again and never saw him. The man never came back. I think once after that I called him up on the 'phone; but he told me Mr. Smoot was out of town.

Q. Do you remember when this work on that bay window was done? A. What do you mean; when it was commenced?

Q. When it was begun and when it was finished? A. My impression is that it was finished sometime in February of the  
67 following year—that would make it 1906. I made a note of it.

Q. You mean the bay window was finished about February? A. Yes, sir.

Q. On what did you make the note you are referring to? A. I made it on an envelope.

Q. I hand you an envelope and ask you if that is the one you refer to? A. Yes, sir. I think it was a letter from you.

Mr. MADDOX: I offer this memorandum in evidence.

(The above mentioned memorandum is in the words and figures following, to-wit:)

"Flooring or covered roof, joists, etc., completed between Monday, January 15th and Wednesday, January 17th, '06 on the bay window in question."

By Mr. MADDOX:

Q. Is there any projection on the east side of Mr. Smoot's house? A. Yes, sir.

Q. What is it? A. It is a very handsome window. It appears to be over the stairway landing, about half way up, I imagine. I have never been inside of the house; but judging from the outside and its height, that is where I would suppose it to be located. It has a  
68 balcony, with projecting stones, and I think there is a railing around it; although I am not quite sure about that. It is a large window, just such a window as you will find at a landing half way up the stairs, and there is a balcony outside.

Cross-examination.

By Mr. JOHNSON:

Q. Colonel, how much of this hedge was cut? A. I think about 12 feet, as near as I can recollect now. I measured it at the time.

Q. It was in the space occupied by the west wall of the bay window? A. Yes, sir; it was about 12 feet—not less than 10 feet. I think it was somewhere between 10 and 12 feet. My impression is it was about 12 feet.

Q. When did you go to Cape May? A. I don't remember at what time we went that summer. We usually go about the last of May or the first or second of June.

Q. At all events you were gone in June? A. Yes.

Q. Did you come back? A. Not until we moved up.

Q. I mean did you, individually, come back? A. I came back once on the occasion I have stated.

Q. Only one time? A. Yes: after getting the letter from my colored man.

Q. You came back only once, before your family returned?  
69 A. Yes, sir.

Q. When did your family return? A. My family returned nearly a month after that. I think they came up about the 14th of October.

Q. It was sometime after the first of October? A. Yes, sir; it was after the first of October.

Q. And you think about the 14th of October? A. Somewhere about that time.

Q. So that from June until the 14th of October, you were only here twice? A. I was only here once.

Q. You came back about the 14th of October, did you not? A. Yes; but then we came up for good, to stay here. I did not come up from Cape May but once on this account.

Q. Did you authorize Mr. Maddox to act, in this matter, as your counsel? A. I did.

Q. Do you know how long he was acting in your behalf, before this hedge was cut? A. I don't know whether my man Wilson stated that or not; but he wrote me that night, and then went to see Mr. Maddox the next day. I think he told me it was the same day that he went to see Mr. Maddox, and Mr. McGregor, who was the builder of that house. He met him on the street, and McGregor went up there and had quite an altercation with this builder, whatever his name was.

70 Q. My question was whether you authorized Mr. Maddox to act for you as counsel? A. I don't quite understand your question.

Q. Before you heard from Wilson. A. I could not have authorized him before I heard from Wilson, because I did not know anything about it.

Q. That is just what I am asking you. A. You did not put your question clearly. I did not understand you.

Q. You did not authorize Mr. Maddox to intervene in this matter, before you heard from Wilson? A. No; I could not, because I didn't know there was anything going on until Wilson wrote to me, and then I wrote to Mr. Maddox to stop it, to initiate proceedings at once and put a stop to any further trespassing.

Q. You wrote Mr. Maddox before you came to Washington, or afterwards? A. I think it was the next day. I heard from Wilson and I wrote to Mr. Maddox the next day, and followed it up myself on the following day. The hedge was cut out then.

Q. Did you telegraph Mr. Maddox? A. I can't remember whether I did or not. It is quite likely I did. I don't remember.

Q. You are sure that you came up the day after you authorized Mr. Maddox to act for you? A. I think so.

71 Q. So that if Mr. Maddox was acting for you a week or two before that hedge was cut, he was acting without your authority? A. No, he was not. It was not a week or ten days before the hedge was cut, because the hedge was cut when I got up here.

Q. Did you ever hear of a mandamus proceeding that was brought against the Acting Inspector of Buildings, with respect to this matter? A. I don't know anything about that.

Q. Do you remember hearing of it? A. I don't believe I did, except that it was talked about.

Q. You did not hear about that proceeding? A. I did not.

Q. Did you know there was a hearing in that mandamus proceeding, before Chief Justice Clabaugh? A. No, I did not.

Q. In which Mr. Maddox represented you? A. Well, if Mr. Maddox represented me he did it by authority. I do not remember about that. You are asking questions now about matters that have slipped my memory entirely.

Mr. MADDUX: I did not represent anybody in that hearing.

Mr. LUCKETT: You were present in court and wanted the Chief Justice to hear you.

72 Mr. MADDUX: I was over there at the hearing, and I was Colonel Heyl's counsel; but I did not represent anybody.

By Mr. JOHNSON:

Q. You speak of some effort that you made to see Mr. Smoot. Did you learn, at the time you were trying to see Mr. Smoot, that he was ill with gastritis? A. I did not know what was the matter with him.

Q. Did you hear that he was ill? A. I don't know that he was ill.

Q. And you did not hear it? A. No; my impression is his clerk said that he was not well, or that he was out of town. I don't remember about that.

Q. Do you know that Mr. Smoot offered to restore the hedge as soon as the wall was built? A. No, I do not. I asked what expectation he had, if any, with reference to restoring the hedge; but I never heard that he had any such intention.

Q. And you never had submitted to you an offer to restore it? A. He never submitted anything to me.

Q. You never had submitted to you an offer to restore the hedge? A. No, sir.

Q. At any time? A. No, sir.

73 Q. Not through Mr. Maddox? A. I supposed you were speaking about Mr. Smoot, or his representative.

Q. I am speaking of both. A. Mr. Maddox spoke to me about that, and I said I would not accept it; but I never had any dealings with the parties.

Q. That is what I had reference to, and I thought that was what you meant. Do you know who the gentleman was that you talked with, who represented Mr. Smoot? A. No, I do not. I never saw him before, and would not know him now if I were to see him. I



do not know who he was, more than that he said he was a clerk or bookkeeper for Mr. Smoot.

Q. As I understand it, your recollection and understanding of this matter is, that you did not know there were any building operations going on next door until you heard from Wilson? A. No.

Q. And that the second day after you heard from Wilson you came to Washington and the hedge was already destroyed? A. Yes, sir.

Q. It was cut out? A. Yes, sir.

Q. Is that your recollection of the event? A. Yes, sir.

Q. Then if Mr. Maddox had, several days or a week prior to the cutting of that hedge, represented you, he was authorized by  
74 you to represent you in the matter, was he? A. He was.

Q. The hedge has been put back; has it not? A. No, sir; I planted some slips there myself last fall. I put it back myself; but it has never been put back by anyone else.

Q. I say that it has been put back? A. When you say it has been put back, the inference is that you mean the parties who took it away put it back.

Q. I do not mean that? A. That is the inference from your question. I planted a new hedge myself there last fall.

Q. After you declined to permit Mr. Smoot to do it? A. Yes.

Q. And it is still there? A. What there is of it.

Q. How long does it take it to grow? A. It took the last hedge seven or eight years to grow to that height. I think it has been stated that that is an easy growing hedge and would grow in a very short time; but anybody who has raised hedges like that knows differently. I have been cultivating that hedge myself ever since it was planted, and I know how long it takes to grow. A part of that hedge is there yet, and you can see what it was and what it would be if it was still there. That hedge was planted between seven and eight years ago.

CHARLES H. HEYL,  
*By the Examiner by Consent.*

Subscribed and sworn to before me this — day of —, 1907.

\_\_\_\_\_,  
*Examiner in Chancery.*

75 The further taking of these depositions was thereupon adjourned subject to notice.

76 WASHINGTON, D. C., October 30, 1907—3 o'clock p. m.

Met pursuant to agreement at the office of Samuel Maddox, Esq., Washington, D. C.

Present on behalf of the complainants, Mr. Maddox.

Present on behalf of the defendant, Mr. Johnson.

Whereupon C. H. HEYL is recalled for further examination:

By Mr. MADDOX:

Q. Since you testified in this case, have you refreshed your recollection in regard to the time when you first heard that Mr. Smoot was going to build on the lot adjoining you? A. Yes sir; I have.



Q. When was it? A. After giving the testimony which I gave here before, sometime after returning to my home and looking over my files of letters, I found some correspondence between you and me which showed conclusively that I had made an error in the date that I stated I had come up here from Cape May.

Q. When was it you first came here? A. It was in September. I think I said before that it was in October.

77 Q. When was it that you first came to see me about it? A. Sometime about the middle of September.

Q. Was it not before that date? A. It was during the fore part of September.

Q. You came to see me then? A. Yes. I had previously had a letter from my colored man, James Wilson, which first gave me the information of the intention to build, in which letter he told me that they would cut down——

Mr. JOHNSON: I object to the witness stating the contents of the letter.

The WITNESS: I simply want to state the information that I had that they intended to cut the hedge. After receiving that letter, I made a visit to Washington and called on Rozier Dulany, and then came down to see Mr. Maddox.

By Mr. MADDOX:

Q. What was the date of the first letter I wrote you on the subject? A. Subsequent to my return, you wrote me on the 14th of September, and I have that letter showing the letter postmarks. I answered that letter on the 16th of September.

Q. You stated in your testimony that you had not heard of the mandamus suit? A. I am coming to that. In reply to my letter of September 16, I had a letter from you on the 19th of September, in which I think you spoke of the Mandamus  
78 proceedings. I have that letter here. Subsequently, I received a telegram from you, dated October 2nd, when I was still at Cape May, saying that the party wall case against the District had been abandoned, that being the mandamus proceeding, and that they would commence building to-morrow, and advising that I had better come home. I then came home.

Q. In response to that telegram, you came home? A. In response to your telegram, I came home.

Q. It was then you found that the hedge had been cut? A. The hedge was cut when I got home. It had been cut the night before, as I understood.

Q. You also stated that you never saw a letter from Mr. Smoot offering to withdraw the hedge? A. I think I understood that from you.

Q. The letter was to me? A. The letter was to you.

Q. You never had such a letter? A. No.

Q. But you saw the letter to me? A. Yes; I saw the letter to you. That is what I meant when I said I never heard from Mr. Smoot, because I never had any correspondence with him. I was really not in error when I stated that, because I had never had any correspondence with him.

## 79 Cross-examination.

By Mr. JOHNSON:

Q. You were not here at the time the suit against the District was abandoned? A. No sir; I only knew that by this telegram which Mr. Maddox sent me.

Q. Mr. Maddox was here at that time? A. I presume he was.

Q. And that telegram came from him here? A. Yes sir.

Mr. MADDOX: I will admit on the record that I not only was here, but I was in the court of Mr. Chief Justice Clabaugh when the matter was being discussed.

CHARLES H. HEYL,  
*By the Examiner by Consent.*

Subscribed and sworn to before me this — day of —, 1907.

Counsel for the complainant announced the testimony closed.

80

*Opinion.*

Filed January 22, 1909.

25945.

HEYL

v.

SMOOT.

Plaintiffs and defendant are adjoining lot owners in the District of Columbia outside of the limits of the original Federal city of Washington.

In building a dwelling house the defendant located it so that it would not fit on his own lot and overlapped the plaintiff's lot with a one story bay window wall about ten feet long. He undertakes to justify this appropriation of his neighbor's property by claiming that the face of the bay window is a party wall and that as such he is entitled to maintain it.

Party walls as such were not known to the Common Law and can rightfully be maintained only by

First, An agreement between owners; or

Second, By some Statute which provides for their existence and an appropriate method of establishing them.

Respecting the territory at bar, there is neither an arrangement or provision by land owners, nor is there any statute. The only Act of Congress which is suggested in support of the defendant's position is as follows:

81 "That the Commissioners of the District of Columbia be, and they are hereby, authorized and directed to make and enforce such rules and regulations relative to the sale of coal in the District of Columbia as shall insure full weight to the purchasers of coal; and all such building regulations for said District as they may deem advisable."

The "regulation" by appropriate authority of the exercise of a right already existing is quite different from depriving the property

owner of a vested right and reverting that right in another property owner, and this latter Congress has not seen fit to authorize or to provide for; by the use of the word "regulation" in the Act referred to, Congress had done no more than authorize the Commissioners to throw around the general right of property owners to erect buildings, such limitations as the public safety and general welfare may require: Congress has not created, and has not undertaken to authorize the Commissioners to create a procedure competent to deprive a property owner of the use of part of his property and give that interest to his neighbor.

Therefore the claim that the building regulations adopted by the Commissioners under authority of the Section justify the maintenance of the bay window wall on the property of the plaintiff cannot be sustained. A mandatory injunction may issue requiring its removal.

WRIGHT.

82

*Final Decree.*

Filed February 2, 1909.

In the Supreme Court of the District of Columbia.

Equity. No. 25945.

JULIA TURNER HEYL et al.

vs.

LEWIS E. SMOOT.

This cause coming on for final hearing on bill, answer, exhibits and proofs, was argued by counsel and duly considered by the Court, and thereupon it is this 2nd day of February, A. D. 1909, adjudged, ordered and decreed that the defendant, Lewis E. Smoot, be, and he is hereby, perpetually enjoined and restrained from maintaining and continuing on the land of the complainants, in the bill mentioned and described, any part of the bay window attached to and forming a part of his, said defendant's, dwelling house, on the West side thereof, built upon Part of Lot numbered One (1) in a subdivision of land in the District of Columbia known as "Widows Mite," as said subdivision is recorded in Liber County No. 12 of the records of the Surveyor of said District; and, further, that said defendant remove so much of said bay window as projects over and across the boundary line between the land of the complainants and said lot of the defendant and rests upon the land of the complainants; and, further, that this mandatory injunction be obeyed and executed by the defendant within sixty days from the date hereof.

83

It is further ordered that the defendant pay unto the complainants the costs of this suit, to be taxed by the Clerk, and have execution thereon as at law.

And from this decree the defendant prays an appeal to the Court of Appeals, which is hereby allowed and the penalty of a bond to act as a supersedeas fixed at \$500.00.

By the Court:

WRIGHT, *Justice.*

*Memoranda.*

February 25, 1909.—Appeal bond (supersedeas) filed.

April 6, 1909.—Time in which to file Transcript of Record in Court of Appeals extended to April 26, A. D. 1909.

84 *Directions to Clerk for Preparation of Transcript of Record.*

Filed April 16, 1909.

In the Supreme Court of the District of Columbia.

No. 25945. In Equity.

JULIA TURNER HEYL et al.

vs.

LEWIS E. SMOOT.

The Clerk will please prepare the transcript of record on appeal to the Court of Appeals including therein the following:

1. Original Bill.
2. Answer of Lewis E. Smoot.
3. Replication.
4. Depositions.
5. Opinion of the Court.
6. Final Decree.
7. Appeal Bond.
8. Order extending time for filing record.
9. This designation of parts of record.

W. G. JOHNSON.

85 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 84 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 25945, In Equity, wherein Julia Turner Heyl, et al. are Complainants and Lewis E. Smoot is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22nd day of April, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2015. Lewis E. Smoot, appellant, vs. Julia Turner Heyl et al. Court of Appeals, District of Columbia. Filed Apr. 26, 1909. Henry W. Hodges, clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL.

---

Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 2015.

LEWIS E. SMOOT, APPELLANT,

vs.

JULIA TURNER HEYL AND OTHERS.

FILED DECEMBER 13, 1909.

Court of Appeals of the District of Columbia, October Term, 1909.

No. 2015.

LEWIS E. SMOOT, Appellant,

vs.

JULIA TURNER HEYL and others.

*Stipulation.*

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that the following transcript and digest from the record and proceedings in suit at Law # 47966 on the dockets of the Clerk of the Supreme Court of the District of Columbia be and the same are hereby made part of the record on appeal in this cause, the same being considered as having the same force and effect as those specifically set forth in the record in this court.

On the 22nd day of September, 1905, appellee filed a petition in the Supreme Court of the District of Columbia, and numbered At Law 47966, against A. M. Poynton, acting inspector of buildings, directing him to enter upon the land of petitioner and the land next adjoining on the west side "to set out the foundation and regulate the westernmost wall of petitioner's house." On the 2nd of

October, 1905, Poynton answered the petition setting up that no such duty was imposed by law upon the Inspector of Buildings as thus suggested in the petition for mandamus, but that the Surveyor of the District of Columbia was charged with such duties. Respondent Poynton also averred in his answer that the owner of the land next adjoining on the west objected to having a party wall built over his land. Appended to the answer and made part of it was the letter of Heyl's attorney set out on page 15 of the printed record.

On the same day, October 2nd, the petitioner Smoot demurred to the answer. The demurrer was set down for hearing and the hearing was begun, but before it was concluded petitioner asked leave to withdraw the demurrer. A stipulation between counsel was thereupon entered into whereby it was agreed that the demurrer might be withdrawn on payment of Clerk's cost by the petitioner. The suit was then discontinued on the same day by consent of both parties.

SAM'L MADDOX,  
H. PRESCOTT GATLEY,  
*Counsel for Appellee.*  
WM. G. JOHNSON,  
*Counsel for Appellant.*

[Endorsed:] No. 2015. October term. Smoot vs. Heyl et al. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Dec. 13, 1909. Henry W. Hodges, clerk.

